National Energy Board

Office national de l'énergie

Reasons for Decision

Kinder Morgan Canada Company

Windsor-Sarnia Pipeline Section 21 Review and Section 71 Applications

MH-1-2009

April 2010

Request for Service

Canada

National Energy Board

Reasons for Decision

In the Matter of

Kinder Morgan Canada Company

Application dated 31 March 2009 for a review of Board Order MO-04-2009 and applications under section 71 of the *National Energy Board Act* (NEB Act) to compel Dome NGL Pipeline Ltd. to provide service on the Windsor-Sarnia Pipeline.

MH-1-2009

April 2010

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Acronyms and Abbreviations

Act or NEB Act	National Energy Board Act
AFE	Authorization for Expenditure
Applicant, Kinder Morgan	Kinder Morgan Canada Company
Applications	Applications to the Board under several provisions of the *National Energy Board Act*, including subsections 21(1), 71(1), 71(3) and section 59
BP	BP Energy Resources Canada Company
bpd	barrels per day
Board or NEB	National Energy Board
Certificate or CPCN	Certificate of Public Convenience and Necessity issued under section 52 of the NEB Act authorizing the construction and operation of a facility
Cochin	Cochin Pipe Lines Ltd. and Kinder Morgan Cochin ULC
Cochin Pipeline	Cochin Pipeline from Fort Saskatchewan to Windsor
Cochin System	Cochin Pipeline plus the Windsor-Sarnia Pipeline
Dome	Dome NGL Pipeline Ltd.
Dow	Dow Chemical Canada ULC, formerly Dow Chemical Canada, Inc.
Dow Facility	Dow storage facility at Sarnia, acquired by Provident Energy Trust in December 2009
EA	Engineering Assessment
EDS	Eastern Delivery System
Imperial	Imperial Oil Resources and ExxonMobil Canada
JVA	Joint Venture Agreement for the Construction, Operation and Maintenance of the Cochin Pipeline
km	kilometre(s)
kp	kilometre post
m	metre(s)
m3/d	cubic metres per day

mm	millimetre(s)
NGL	natural gas liquids
NOVA	NOVA Chemicals Corporation
NPS	nominal pipe size
OPR-99	*Onshore Pipeline Regulations, 1999*
UA	Usage Agreement
US	United States
Users	Dome and Kinder Morgan, under the Usage Agreement
WSFJV	Windsor Storage Facility Joint Venture
WSP	Windsor to Sarnia Pipeline or Windsor-Sarnia Pipeline or Windsor Dow Pipeline

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the regulations made thereunder; and

IN THE MATTER OF an application dated 31 March 2009 filed with the National Energy Board by Kinder Morgan Canada Company under file OF-Fac-Oil-D128-2008-03 03 for a variety of relief, including a review and variance of Order MO-04-2009 pursuant to subsection 21(1) of the *National Energy Board Act*; for an order compelling Dome to receive, transport and deliver natural gas liquids on the Windsor-Sarnia Pipeline, under section 71 of the Act, including the provision of facilities to receive those natural gas liquids; and for an order compelling Dome to file a tariff for the transportation of natural gas liquids on the pipeline, pursuant to section 59 of the Act; and

IN THE MATTER OF Hearing Order MH-1-2009 dated 17 July 2009;

HEARD in Calgary, Alberta on 19, 20, 21, 22 and 26 January 2010;

BEFORE:

G.A. Habib	Presiding Member
R.R. George	Member
L. Mercier	Member

<u>Appearances</u>	<u>Participants</u>	<u>Witnesses</u>
Applicant		
R. Block, Q.C. A. Ross	Kinder Morgan Canada Company	P. Dito D. Lindley D. Rial R. Coté
Intervenors		
D.A. Holgate	Dome NGL Pipeline Ltd.	D. Moe P. Cahill
R.R. Moore	Imperial Oil Resources & ExxonMobil Canada	
J.H. Smellie	NOVA Chemicals Corporation	G. Engbloom G. Flint A. Broenink
M. Haug	National Energy Board	

Chapter 1

Introduction

1.1 The Applications

On 31 March 2009, Kinder Morgan Canada Company (Kinder Morgan) applied to the National Energy Board (Board or NEB), pursuant to various sections of the *National Energy Board Act* (Act or NEB Act) for the following relief in respect of the Windsor to Sarnia Pipeline (WSP), operated by Dome NGL Pipeline Ltd. (Dome):[1]

- A review of Board Order MO-04-2009, pursuant to subsection 21(1);
- An order compelling Dome to receive, transport and deliver natural gas liquids (NGL) on the WSP, up to its capacity, pursuant to subsection 71(1);
- An order requiring Dome to provide adequate and suitable facilities for receiving NGL onto the WSP, pursuant to subsection 71(3);
- An order compelling Dome to file a tariff for the transportation of NGL on the WSP, pursuant to section 59 of the Act; and
- Other relief as Kinder Morgan may request or that the Board may consider appropriate.

As the hearing evolved, Kinder Morgan modified the relief it requested, most notably, requesting that under section 59 of the Act, the Board order Dome to prepare and submit for Kinder Morgan's approval a tariff for the transportation of NGL on the WSP and then, assuming such approval were granted, submit the tariff to the Board.

NOVA Chemicals Corporation (NOVA), as an intervenor in the proceeding, expressed its interest in direct transfer service of NGL on the WSP, at an initial capacity of 13,000 barrels per day (bpd), increasing to as much as 40,000 bpd, without the use of storage caverns at the Windsor Storage Facility Joint Venture (WSFJV).

1.2 Deactivation of the Windsor-Sarnia Pipeline

On 23 December 2008, Dome applied to deactivate the WSP under subsection 44(1) of the *Onshore Pipeline Regulations, 1999* (OPR-99). The WSP had not shipped product since March 2006. On 10 February 2009, the Board issued Order MO-04-2009 authorizing the deactivation, as the pipeline had been dormant for 12 months (see Appendix I).

On 12 March 2009, Kinder Morgan filed an application for a stay of Board Order MO-04-2009. After receiving comments from NOVA, Imperial Oil Resources and Exxon Mobil Canada (Imperial) and Dome, the Board found that Kinder Morgan would not suffer irreparable harm if the stay were not granted and denied the application (see Appendix II).

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1 Dome also referred to the WSP as the Windsor-Dow Pipeline in its deactivation application of 23 December 2008.

Kinder Morgan subsequently filed its applications under section 59 and subsections 21(1), 71(1) and 71(3) of the Act. With respect to the application for review under subsection 21(1), the Board decided that the deactivation application did not adequately disclose the unresolved concerns of potential shippers with respect to service on the pipeline. The Board concluded that Kinder Morgan had raised a doubt as to the correctness of the decision to issue Order MO-04-2009 and decided to proceed with a review (see Appendix III).

1.3 MH-1-2009 Hearing Process

On 17 July 2009, the Board issued Hearing Order MH-1-2009, which established the process for the Board's consideration of the Applications. The Hearing Order included the list of issues which the Board proposed for consideration during its assessment of the Application. No comments were received. The List of Issues is included in Appendix IV of these Reasons. Notice of the hearing was published in nine newspapers with a range of national to regional and local coverage.

The oral portion of the public hearing was held on 19, 20, 21, 22 and 26 January 2010 in Calgary, Alberta.

Intervenors in the proceeding were Dome, NOVA, Dow Chemical Canada ULC (formerly Dow Chemical Canada Inc.) and Imperial. Dow advised that it had sold its facility in Sarnia to Provident Energy, and withdrew its intervention prior to the oral hearing.

Chapter 2

History and Facility Context

2.1 History of the Cochin Pipeline and the Windsor-Sarnia Pipeline

In 1974, Certificate of Public Convenience and Necessity (CPCN) OC-29 was issued to Cochin Pipe Lines Ltd. (Cochin) to construct, operate and maintain the Cochin Pipeline System (Cochin System) which was designed to transport ethane, ethylene, butane, propane and NGL from Alberta to its Sarnia terminus and intermediate points in Canada and the US. To provide for the construction, operation and maintenance of the Cochin System, Cochin entered into a Joint Venture Agreement (JVA) in 1976 with Dow Pipeline Ltd. and the Alberta Gas Trunk Line (Canada) Limited.

On 1 November 1979, Cochin entered into a Usage Agreement (UA) for commercial purposes with the other parties to the Cochin JVA or their successors. The purpose of the UA is to specify the terms and conditions under which one party would own and operate the WSP on behalf of all Users. Parties to the UA are called Users (these are neither shippers nor owners) and have some rights and responsibilities related to tolls and costs, as will be discussed. Kinder Morgan holds a 49.76205 per cent interest and Dome holds a 50.23795 per cent interest as Users, under the combined effect of the UA and the JVA.

The current parties to the JVA are Kinder Morgan Canada Company and Kinder Morgan Cochin ULC. The current parties to the UA are Dome and Kinder Morgan Canada Company. The provisions of the JVA apply *mutatis mutandis*[2] to the rights of usage under the UA.

In 1979, the Board issued Order AO-3-OC-29 authorizing Cochin to exchange the 10-inch line originally authorized under CPCN OC-29 for an existing 12-inch line owned by Dome and lying in the same right of way. The 12-inch line is now known as the WSP and the 10-inch line as the Eastern Delivery System (EDS).

In 2007, Kinder Morgan, already a part owner, acquired the Cochin System by purchasing the remaining shares of Cochin Pipe Lines Ltd. from BP Canada Energy Resources Company (BP). The name of Cochin Pipe Lines Ltd. was then changed to Kinder Morgan Cochin ULC.

Subsequently, Kinder Morgan Cochin ULC transferred the WSP to Dome, a wholly owned subsidiary of BP. Board approval was sought and obtained for the transfer under Order MO-07-2007. On 6 December 2007, the Governor in Council issued a new CPCN, OC-52, to Dome for the WSP.

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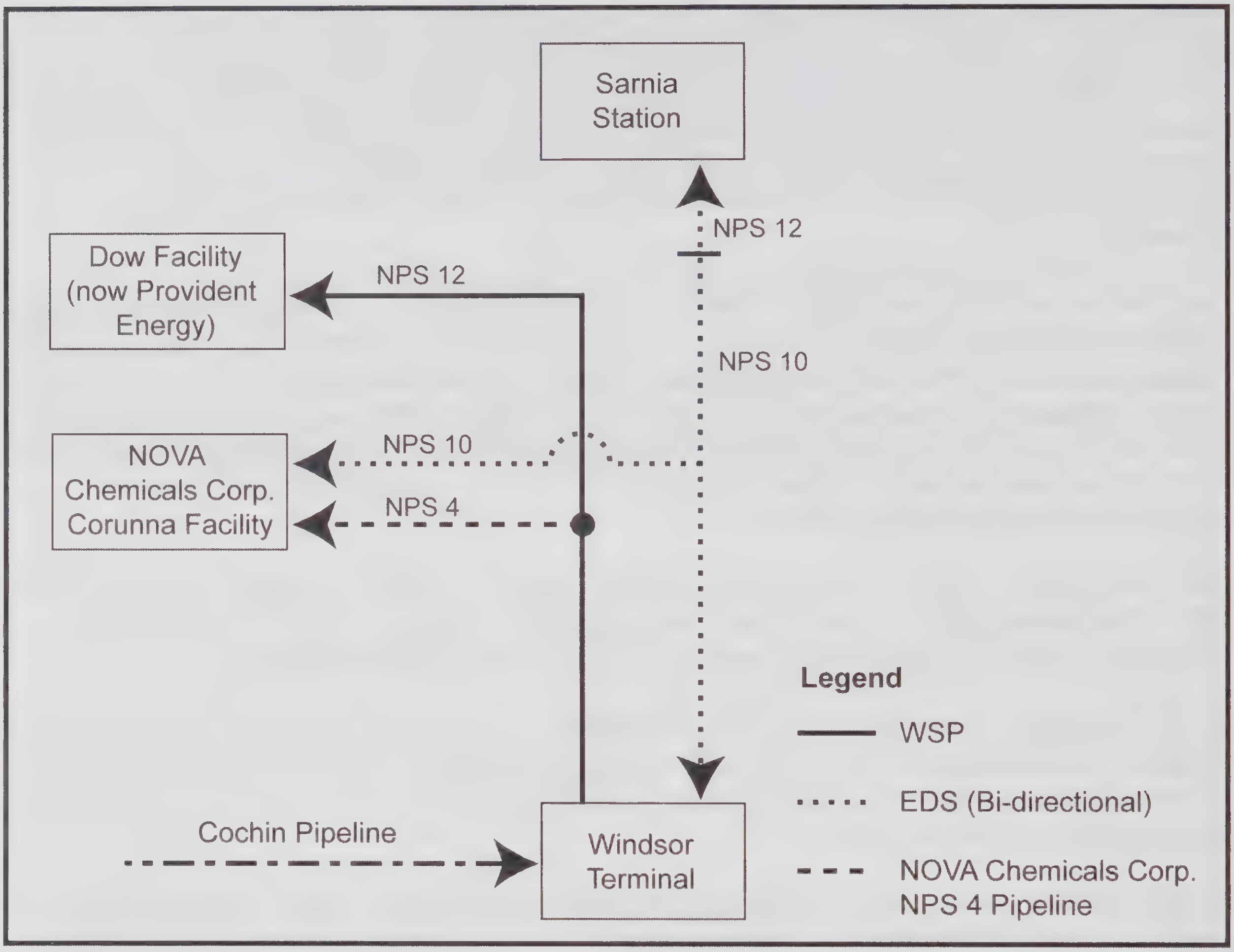
2 *With needed changes in the details.*
The Dictionary of Canadian Law (1st ed.) (Scarborough, Ont.: Carswell, 1991), edited by Daphne A. Dukelow and Betsy Nuse

2.2 Description of Facilities

Following are brief descriptions of the WSP and other related facilities discussed within the proceeding. Figure 2-1 provides an overview of the Windsor to Sarnia facilities and the relationship among the various facilities.

Figure 2-1
Schematic of Windsor to Sarnia Facilities



2.2.1 Windsor Sarnia Pipeline

The WSP, owned by Dome, consists of approximately 133 kilometres (km) of 323.9 millimetres (mm) nominal pipe size (NPS 12) outside diameter pipeline with 13 interspaced mainline block valves. The WSP commences at a valve located at the Windsor Terminal near Windsor, Ontario. There are two delivery points. The first is near kilometre post (kp) 123 at a connection to the NOVA NPS 4 pipeline which delivers to the NOVA Corunna chemical facility. The WSP terminates at the second delivery point, at the Dow Chemical underground storage facility near

Sarnia, Ontario.[3] The WSP was originally designed to be capable of transporting ethylene, ethane, propane, butane and mixed NGL. The WSP inlet is connected to the Cochin Pipeline at the Windsor Terminal and is not currently configured to receive deliveries from any other pipeline or facility.

2.2.2 The Cochin Pipeline at the Windsor Terminal

The termination point of the Cochin Pipeline is located at the Windsor Terminal. Cochin owns or leases facilities at the Windsor Terminal necessary for direct delivery of shipments to the WSP or the WSFJV storage caverns. Cochin also leases cavern I-4 for the storage of the batch interface materials. Cochin's lease for cavern I-4 will expire at the end of 2010.

2.2.3 Eastern Delivery System

The EDS is a bi-directional NGL pipeline system owned by Dome. It extends approximately 134 km between the Windsor Terminal and Sarnia pump station, and runs parallel to the WSP for most of its length. It has a 273.1 mm (NPS 10) pipeline lateral, located approximately 11 km from the Sarnia pump station, which delivers to the NOVA Corunna site. There is no connection to the Dow storage cavern facility. The EDS operates in batch mode and is bi-directional, transporting NGL products northbound from the Windsor Terminal with delivery to the Corunna facility and Sarnia pump station, as well as southbound.

2.2.4 Windsor Terminal

The Windsor Terminal is operated by BP and has facilities for the receipt, pumping, terminalling and storage of NGL components and NGL mixes. It includes terminus facilities associated with the Cochin Pipeline, facilities associated with the inlet to the WSP, the WSFJV leased storage caverns, the connection to the bi-directional EDS and other receipt, terminalling and storage facilities.

2.2.5 Windsor Storage Facilities Joint Venture

The WSFJV is a business arrangement among BP, NOVA and Dow to lease and share three NGL storage caverns located at the Windsor Terminal. The WSFJV caverns are configured to receive deliveries from the Cochin Pipeline. Caverns E-1, E-3 and E-5 are used for breakout storage for shipments received from the Cochin Pipeline. At present, the caverns are able to make batch deliveries into the EDS but it is not possible to deliver into the WSP as there is no connection between these caverns and the WSP. The leases on these three caverns will terminate at the end of 2010 and the caverns will revert to BP at that time. Currently, with the exception of E-3, the caverns are not in service and would require maintenance and repair before being able to provide service.

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3 In these Reasons, the Dow storage facility at Sarnia, now owned by Provident Energy, is referred to as the 'Dow facility'.

2.2.6 The NOVA Corunna NPS 4 Lateral

The NOVA NPS 4 lateral pipeline extends approximately 4 km and connects the WSP with facilities and storage at its Corunna plant site. Prior to 2007, this lateral primarily carried ethylene deliveries from the WSP. The lateral is currently deactivated and will require modifications prior to reactivation for NGL transportation service.

2.2.7 Operation of the Facilities

Prior to 2007, the Windsor Terminal received shipments from the Cochin Pipeline consisting mainly of batches of ethane and ethylene. Ethylene batch shipments were transferred directly from the Cochin Pipeline into the WSP in a continuous flow manner. The WSP delivered ethylene shipments to the NOVA Corunna facility and to the Dow storage facilities. Cochin Pipeline batch shipments of ethane were delivered directly into one of the three WSFJV caverns. Mixed interface[4] materials between the ethane and ethylene batches were directed into a cavern leased by Cochin known as cavern I-4. The mixed interface and the ethane batches were then shipped by the EDS from the Windsor Terminal to the Corunna facility and the Sarnia pump station.

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4 Interface refers to the buffer material that is used to separate two batches of different products in a batch operation in a pipeline (e.g. a propane interface/buffer next to an ethane –propane batch)

Chapter 3

Section 71 of the *National Energy Board Act*

3.1 Legal Framework

Subsection 71(1) of the Act imposes a duty on a company operating an oil pipeline to receive, transport and deliver all oil offered for transmission by means of its pipeline, subject to exemptions, conditions or regulations imposed by the Board. The subsection does not specifically refer to common carriage, but it is generally accepted that it reflects the common law duties of a common carrier pipeline. The subsection grants the Board broad authority, and in contrast to some other provisions in the Act, does not specify criteria that the Board must take into consideration.

In MH-4-96, the Board confirmed its policy articulated in RH-4-84 where the Board said that an oil pipeline carrier was "... under a *prima facie* duty to ship all oil tendered to it, including petroleum product, unless it can convince the Board that for some reason, such as a safety or capacity related one, it cannot."[5] The reasons in MH-4-96 also examined judicial authority concerning common carriage:

> ... tribunals and courts have consistently ruled that the obligations of a statutory carrier in respect of both service and facilities are tempered by a test of reasonableness. An example of this adjudicative approach is found in the judgment of the Supreme Court of Canada in *Patchett & Sons Ltd. v Pacific Great Eastern Railway Co.* (1959), 78 C.R.T.C. 282 (S.C.C.), where the obligation of a railway company to afford reasonable facilities as part of its common carrier obligations was described in these terms:
>
> > "Individuals have placed their capital at the risk of the operations; they cannot be compelled to bankrupt themselves by doing more than what they have embraced within their public profession, reasonable service. Saving any express or special statutory obligation, that characteristic extends to the carrier's entire activity. Under that scope of duty a carrier subject to the Act is placed."
>
> The importance of the approach articulated in the case law is that compliance with the common carrier provisions is determined by a test of reasonableness, which is a relative concept. Section 71 of the NEB Act is consistent with this common law approach because it permits the Board to tailor the statutory obligations of both oil and gas pipelines to fit any unique circumstances which may exist. Thus, the Board can increase or decrease the statutory common carrier obligations of an oil,

5 MH-4-96 Reasons for Decision, PanCanadian Petroleum Limited, Request for Service, February 1997, pages 10 and 11, discussing RH-4-84 Reasons for Decision, Gulf Canada Limited, December 1984

gas or commodity pipeline in respect of their carriage of oil, gas or another commodity.[6]

Section 67 of the Act prohibits "unjust discrimination in tolls, service or facilities against any person or locality". Together with subsection 71(1), this section requires that an oil pipeline offer service under the same terms and conditions to any party wishing to ship oil on its line.

Under subsection 71(3) of the Act, the Board may require an oil pipeline carrier to provide adequate and suitable facilities to transmit oil, if the Board considers it to be necessary or desirable in the public interest, and if the Board finds that no undue burden will be placed on the oil pipeline carrier by requiring it to do so.

For convenience, Appendix V includes the relevant provisions of the NEB Act and the OPR-99 as they relate to this case.

3.2 Views of the Parties

3.2.1 Common Carriage Obligation

The parties' evidence and argument about common carriage had two primary and interrelated themes: whether the Cochin Pipeline and WSP are one pipeline system or two; and the impact of the contractual provisions in the JVA and the UA. In brief, Kinder Morgan opposed access to the WSP by non-Cochin Pipeline shippers. Dome and NOVA supported such access, although at present the Cochin Pipeline is the only pipeline that can deliver product to the WSP.

First, Kinder Morgan asserted that the Cochin Pipeline and the WSP are one system. Kinder Morgan considered the WSP to be the second segment of the Cochin System. Board Order AO-3-OC-29, issued in 1979, incorporated the WSP into CPCN OC-29, the authorization for the Cochin System. According to Kinder Morgan, the UA and the JVA, which require that the capacity of the WSP be made available to the Cochin Pipeline shippers, support the WSP being the second leg of the Cochin System. Additionally, Kinder Morgan stated that the UA is similar to a long term lease although it acknowledged that the Board was not asked to approve the UA as a lease under paragraph 74(1)(a) of the Act when the legal interest in the WSP was transferred to Dome in 2007.

Dome asserted that the WSP was created by CPCN OC-52 but that whether the WSP ever was part of the Cochin System is irrelevant to whether the WSP should be reactivated and whether service should be provided under subsection 71(1) of the Act. NOVA suggested that when the Board issued CPCN OC-52 to Dome, the Board understood that the Cochin Pipeline and the WSP would be two separate pipelines with two different owners.

Second, although Kinder Morgan agreed that the WSP is a common carrier, it interpreted Dome's common carrier obligations in light of the contractual underpinning of the pipeline. Kinder Morgan characterized the application of Clause 4.3 of the JVA on a *mutatis mutandis* basis to the rights of usage in the UA as requiring that the entire WSP capacity be used in common carrier service for the Cochin Pipeline shippers. It further contended that the adding of service to make

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6 MH-4-96 Reasons for Decision, page 11

the capacity of the WSP available to sources other than Cochin Pipeline shippers would require an amendment to the UA. Dome submitted that the UA would continue to apply to Dome and Kinder Morgan, but did not see how it was relevant to the regulatory relief sought by Kinder Morgan. NOVA submitted that Kinder Morgan's position, essentially that parties to a private commercial agreement can determine who may have access to an NEB-regulated pipeline, is wrong in law.

Kinder Morgan took the position that if product were to become available from sources other than the Cochin Pipeline, the Board should address it at that time. Dome argued that its common carrier obligation under subsection 71(1) is owed to all and is not limited to the shippers on the Cochin Pipeline. Dome asserted that if the WSP were returned to service, Dome would make the capacity available to all shippers on a common carrier basis. NOVA observed that the Cochin and WSP facilities have a long history of operating as a single system. However, NOVA supported non-Cochin Pipeline shippers having access to the WSP and urged the Board to render a decision now, to avoid the need for future applications to the Board whenever a new source of NGL for the WSP is proposed.

During the oral portion of the hearing, the Board questioned Kinder Morgan's witnesses and counsel about, respectively, the evidence and the law concerning common carriage. Kinder Morgan's witnesses acknowledged that there is regulatory risk associated with contracts such as the JVA and the UA. Counsel for Kinder Morgan agreed that the Board and the parties are governed by the law, subsection 71(1) of the Act.

3.2.2 Duty to Transmit Oil Offered for Service

Dome acknowledged that it has a *prima facie* duty to carry oil that is offered for service and that it is prepared to provide service on reasonable terms. Dome addressed the test of reasonableness articulated in MH-4-96 and said that it would, if directed by the Board, make the WSP available for service on the grounds that service is offered to all shippers, that there is reasonable assurance of cost recovery through a facilities support agreement and that appropriate facilities include metering at the WSP inlet downstream of any potential leaks. There is currently one shipper, NOVA, expressing intent to ship on the WSP. Kinder Morgan is not offering oil for transportation.

Parties discussed WSP common carriage operation under various scenarios of volumes and delivery points, and the implications for apportionment, flow rates and facility constraints. NOVA acknowledged that with service only to its receipt point, the WSP is constrained to a maximum volume of 13,000 bpd because of the capacity of NOVA's NPS 4 lateral. NOVA pointed out that it would be possible to accommodate other shippers wanting to ship to NOVA's receipt point within the 13,000 bpd scenario, though such a situation was unlikely to arise.

Dome stated that the WSP could operate in a direct transfer mode but argued that a flow rate constraint of 13,000 bpd would make this level unsustainable if other shippers were to be accommodated at other delivery points. It was apparent from the evidence that if other shippers were to request delivery to another delivery point, such as the Dow storage, then the issue of access could arise. NOVA indicated that there are options to relieve this capacity constraint. These could include looping its NPS 4 lateral or using storage at the Dow facility. Evidence

from the parties indicated that the capacity of the WSP could be as high as 100,000 bpd, dependent upon several factors.

NOVA affirmed its position that direct transfer service from Cochin should have priority access. NOVA argued that priority access would not be inconsistent with maintaining the common carrier status, as the Board has accommodated a range of combinations of contract and common carriage on other pipelines.

3.2.3 Provision of Adequate and Suitable Facilities

The parties did not contest Dome's evidence that the WSP is, from an integrity management perspective, capable of providing service and that it should be able to be utilized for many years. However, the parties provided differing points of view concerning the replacement or addition of new facilities to provide service on the WSP.

Kinder Morgan asserted that minimal facilities are needed. NOVA agreed that no substantial or material new facilities are necessary to provide the direct transfer service which it requests. Kinder Morgan specifically identified the Cochin spool piece and Kinder Morgan's pump P-340 on the Cochin Pipeline (the WSP does not have its own pump), as two components needed to return the WSP to service. In argument, NOVA supported the suggestion that the Board provide direction with respect to these components.

Kinder Morgan submitted that pump P-340 is a Kinder Morgan asset and any required modifications or replacement will be a Kinder Morgan cost. Kinder Morgan said that the pump could be modified to meet a specific operating condition.

Dome presented evidence concerning other activities and cost estimates necessary in a reactivation of the WSP including integrity verification digs, a pipe cutout, control center modifications, line purging and commissioning as well as associated in-house costs. Kinder Morgan was of the view these items should be considered as maintenance costs rather than capital costs. Generally, Kinder Morgan accepted that the activities are necessary but it qualified its acceptance by indicating that it did not have enough information to confirm cost estimates.

During the hearing, evidence unfolded with respect to the suitability of the existing Cochin Pipeline meters within Windsor Terminal. Dome submitted that the meters are not suitable due to their location upstream of a manifold and valve system that introduces the potential for unaccounted system losses prior to receipt into the WSP. Dome maintained that it will be at risk for those volume losses unless a new metering facility is installed at a location near the inlet of the WSP and requested in argument that the Board consider ordering a new meter at that point. Kinder Morgan argued that the existing meters had been used in past service for deliveries to the WSP from the Cochin Pipeline and should be suitable for continued service.

A question arose concerning whether inefficiencies would arise in restoring the WSP to full capacity in an incremental manner. Dome responded that no inefficiency would arise from the addition of facilities in response to incremental increases in volumes.

Kinder Morgan suggested that the Board direct Dome and Kinder Morgan to investigate effective and efficient cost alternatives for reconnecting the WSP utilizing existing facilities where possible. Dome did not oppose a Board direction that the parties meet to confirm what facilities are necessary. Dome expected that the parties would have to determine whether third party facilities are acceptable and, if so, whether they can be used on acceptable commercial terms. NOVA recommended that determination of necessary additional facilities be commensurate with the level of service requested and be based upon sound pipelining practice.

By the conclusion of the oral portion of the hearing, parties agreed for the most part that further investigations and assessments would be required to better determine the suitability of existing equipment, the need for new equipment and the associated costs to restore the WSP to service, particularly after receipt of a detailed shipper service request. Some of the major facilities considered include:

- A new meter facility at a location near the inlet of the WSP at the Windsor Terminal;
- A new meter facility at or near the Corunna facility delivery point on the WSP;
- A new mainline block valve immediately downstream of the Corunna facility receipt point;
- A batch detector immediately upstream of the Corunna facility receipt point;
- Replacement of existing meters at the termination of the WSP at the Dow storage facility; and
- Facilities associated with provision of a new WSP receipt point at the Windsor Terminal.

See Appendix VI for a summary of the views of parties with respect to certain facilities, other than a new inlet meter to the WSP that was discussed earlier.

3.2.4 Burden of Providing Facilities

The parties provided wide ranging estimates for the cost of reactivating the pipeline, which reflected the differing views as to what facilities are necessary. Dome submitted a Class 5 estimate of $4.2 million.[7] Kinder Morgan did not dispute the estimates for individual components, however, it maintained that certain components would not be needed to provide the requested service. Kinder Morgan proposed that roughly $1 million would cover the cost of facilities needed, in particular arguing that a WSP inlet meter would not be required as Dome could rely on commercial arrangements with Kinder Morgan. Similarly, NOVA did not dispute the individual costs, although it did consider that not all suggested components were required. Dome indicated that it expected to pursue discussions with NOVA, particularly on metering.

There was some confusion regarding who would be responsible for any additional capital expenditures on the WSP. The commercial arrangements (UA and JVA introduced in Chapter 2) provide that the Users pay their respective shares of ongoing capital and operating charges, and have rights to similar shares of toll revenue. Dome and Kinder Morgan had contrasting views relating to the responsibility for incremental capital beyond that currently on the financial

7 Class 5 estimates are preliminary estimates, considered to be accurate within minus 50 to plus 100 per cent.

records. Dome contended that commercial arrangements might not require Kinder Morgan to pay for half of the incremental capital. Kinder Morgan indicated that it did expect to pay for half and had signed an Authorization for Expenditure (AFE) for some repair costs since the 2007 change of ownership.[8] Dome indicated it had sent an AFE to Kinder Morgan in error and had not invoiced for incremental capital payments as authorized by the AFE. Dome indicated that the UA contains no express provisions under Schedule A for recovery of additional capital investments. NOVA, also as a previous party to the JVA, indicated that Dome was erroneously interpreting the commercial contract.

Dome contended that it would be at risk financially for the recovery of its share of any incremental capital. Under the UA, each User would receive its share of toll revenue, if the line were in operation. However, without assurances of continued shipments and toll revenue, Dome was reluctant to proceed.

Moreover, Dome considered that any investment in the WSP would be undue, even if a facilities support agreement with a creditworthy party were in place, because the EDS provides comparable, lower cost service.

Imperial and NOVA contended that commercial arrangements would remove any burden for Dome. Further, NOVA argued that the onus of proving an undue burden would rest on Dome who had indicated that the burden is not extraordinarily large.

8 See sections 2.1 and 5.1 where the Usage Agreement is discussed.

Chapter 4

Markets and Transportation

When reviewing the deactivation order and considering compelling Dome to transport NGL under subsection 71(1) of the Act, the Board takes into consideration whether there is a clear market interest in making such orders, based on the supply, markets and transportation infrastructure evidence submitted by the parties. The Board also takes into account the feasibility of the transportation alternatives for the service sought by NOVA.

4.1 Supply

Kinder Morgan centered its views about NGL supply for the WSP around the fact that the WSP interconnects with the Cochin Pipeline, thereby allowing, in Kinder Morgan's view, the seamless transfer of NGL to the WSP for transport to Sarnia. The Cochin Pipeline is a major long-haul transmission pipeline, owned and operated by Kinder Morgan, that transports NGL from Fort Saskatchewan, Alberta to the Windsor Terminal. The Fort Saskatchewan/Edmonton area is one of the main NGL hubs in North America with a high concentration of underground storage facilities, fractionators, refineries, petrochemical plants, and NGL gathering pipelines. The Cochin Pipeline has multiple existing or potential receipt points along its US portion that permit volumes from sources such as the Conway hub in the US Midwest, to reach Windsor and the WSP.

Dome took a broader approach to supply. It submitted that hydrocarbons processed or supplied in the Sarnia area are received from other regions of North America or, in the case of crude oil and condensates, imported into the US and Canada. Dome stated that BP estimates the NGL supply available in western Canada and the US from where BP obtains its supply to be approximately 1.5 million bpd, including 0.8 million bpd of propane and butanes. Dome also stated that NGL can be imported into the Sarnia area by pipeline, rail car or truck, either as specification NGL products (ethane, propane, butanes, and condensate) or as NGL mix.

NOVA presented evidence related to its own supply situation in the Sarnia area, and expressed concerns about the long-term availability of Enbridge's Line 9 to deliver crude oil and condensate feedstock to its Corunna facility. NOVA believed that securing access to the WSP would provide an alternative source of NGL supply from the US. NOVA submitted that growing gas production from the US Rockies region and recent expansions in gas extraction capacity in the US have increased the availability of NGL in the US mid-continent. NOVA is actively pursuing commercial arrangements with suppliers to secure NGL from mid-continent sources for shipment to its Corunna facility. NOVA stated that it would be in a position to begin receiving NGL within six to nine months of receiving assurances that the WSP will be available to provide service.

4.2 Markets

There were divergent views among the parties regarding the NGL market to be served by the WSP in terms of the market's size and geographic boundaries. Kinder Morgan submitted its market views in its role as a pipeline operator. Kinder Morgan indicated that the market for the products transported on the WSP is in the Sarnia area, not in the Windsor area. A number of chemical and petrochemical complexes that use NGL as a feedstock operate in this region, including facilities owned by Dow, NOVA, Shell Canada, Imperial Oil, and Lanxess. Kinder Morgan also stated that the market in the Sarnia area has growth potential in the future.

In contrast, Dome believed it was not possible to define the end-use market in Sarnia. In Dome's opinion, the market is much larger than the Sarnia region alone, and includes eastern Canada, the US northeast, the US Midwest and US mid-continent. Dome also challenged other parties' views about significant growth potential of NGL demand in the Sarnia area, citing the recent closure of Dow's petrochemical facilities and the downsizing of Lanxess' Sarnia operations as supporting its position.

NOVA stated in its evidence that it has completed or is in the process of completing modernizations and expansions of its ethylene and polyethylene manufacturing capacity. NOVA's modernization projects will increase NGL feedstock capacity from a current estimate of 35,000 bpd to 55,000 bpd. NOVA expects to initially secure an annual average supply of 13,000 bpd of NGL via the Cochin Pipeline and the WSP. This volume could potentially increase to 40,000 bpd if the capacity constraint of the NPS 4 lateral that connects the WSP with its Corunna facility is eliminated. NOVA also indicated that its Corunna flexicracker has the flexibility to crack light and heavy NGL feedstock.

Imperial contended that there is a demand for service on the WSP, and that maintaining its service contributes to the competitiveness and efficiency of the NGL market in the Sarnia area. Imperial remarked that the greater the number of market options, the more efficient the marketplace.

No independent market assessments or estimations of current or future Sarnia area market demand were provided by the Applicant or the Intervenors.

4.3 Transportation Alternatives to the WSP

Kinder Morgan, Dome and NOVA submitted evidence about the alternatives available for the transportation of NGL between the Windsor Terminal and its intended destinations in Sarnia. The EDS was presented as the main alternative to the WSP. The suitability of both the WSP and the EDS for the type of NGL transportation sought by Kinder Morgan and NOVA was discussed in considerable detail.

4.3.1 Eastern Delivery System

Dome stated that the EDS is the best and most cost-effective alternative to the WSP, given that the EDS is readily available, could accept volumes from the Cochin Pipeline and other sources at Windsor, could operate independently of the Cochin Pipeline, has spare capacity and is already

connected to NOVA's site at Corunna via the NPS 10 lateral. Dome also indicated that the EDS could be connected to the Dow site within six months by creating a lateral with a section of the WSP upstream of the NPS 4 NOVA connection. Dome asserted that the direct transfer of NGL between the Cochin Pipeline and the WSP was not possible without the use of terminalling and storage services at Windsor. Dome also noted that terminalling and storage services for non-propane NGL at the WSFJV caverns require repairs to at least one of the caverns, and that a tariff for different types of NGL needs to be established.

Kinder Morgan, from the perspective of a User under the UA and not a shipper, stated that the EDS it is not a substitute to the WSP for NGL movements from Windsor to Sarnia due to the requirement of using the Windsor Terminal and storage facilities to transfer NGL volumes from the Cochin Pipeline to the EDS. Kinder Morgan argued that the WSP could be operated in a direct transfer mode with the Cochin Pipeline, avoiding storage and terminalling costs at Windsor. Kinder Morgan also stated that since the WSP flows in a northbound direction only, the WSP would not be affected by flow reversals that occur with the operation of the EDS.

NOVA supported Kinder Morgan's position by noting that the WSP has historically operated by directly receiving volumes of ethylene from the Cochin Pipeline for transportation on the WSP. NOVA considered that a similar operation involving transportation of lower vapour pressure NGL on the WSP is feasible with minimal pipeline modifications. NOVA argued that the bi-directional operation of the EDS could affect its ability to source and schedule NGL feedstock shipments. NOVA asserted that the total delivered cost of product is crucial in choosing among competing pipelines. NOVA stated that the EDS cannot offer a comparable service to the WSP, as the EDS cannot offer a direct transfer from the Cochin Pipeline, nor can the EDS deliver to the Dow site without capital modifications to allow an interconnection similar to the one that already exists with the WSP. The ability of the WSP to connect directly to the Cochin Pipeline and then to utilize NOVA's caverns, eliminates the requirement of terminalling and storage at the WSFJV caverns and the associated costs. Furthermore, NOVA noted that its Sarnia flexicracker has the ability to process the volumes and types of NGL that NOVA wishes to ship, as well as any associated interface NGL material.

Dome later acknowledged that although the direct transfer of NGL at Windsor to the WSP was not optimal in its view, it was feasible. Dome also signaled its willingness to implement this option, subject to the inclusion of some metering facilities and reasonable assurances of cost recovery. Dome confirmed that no connections presently exist for the movement of NGL from the WSFJV caverns to the WSP and that significant capital investments would be required. In addition, Dome recognized that although the EDS would be able to move the NGL products requested by NOVA, the existing limitations at the facilities upstream of the pipeline, specifically, WSFJV storage, constrain the transportation of NGL products on the EDS from the Cochin Pipeline. Dome acknowledged that there is no interest by the WSFJV partners in making any investment to refurbish the WSFJV caverns, since the lease of the facilities expires at the end of 2010. However, Dome indicated that although the WSFJV partners had no objections if BP decided to make the WSFJV investment by itself, BP would need to secure financial commitments from shippers who have an interest in utilizing WSFJV storage prior to undertaking these repairs. Dome noted that BP's December 2009 request for expressions of interest in utilizing WSFJV storage and terminalling services indicated little interest for additional services at the WSFJV caverns.

NOVA and Kinder Morgan both noted that pipeline competition is in the public interest. NOVA was of the view that even though competition could lead to toll impacts among pipeline competitors, these impacts are no reason to limit the competition that a shipper seeks in selecting one pipeline over another. NOVA noted that, as the Board said in a previous decision, a duplication of facilities that results in beneficial competition is in the public interest.[9] NOVA also mentioned it does not want to be limited to sourcing supply through the Cochin Pipeline, but is also seeking to ship other potential sources of NGL supply on the WSP.

From the perspective of Dome, the EDS and WSP were not competing with each other, but rather were in competition with other pipelines that could possibly deliver NGL supply into the Sarnia region. Dome maintained that both the EDS and WSP offer a similar service for the transportation of NGL from Windsor to Sarnia, and the best way to provide this service in a cost effective manner is through only one of the pipelines, regardless of which pipeline is chosen. Nevertheless, Dome recognized that if the EDS and the WSP were owned by different companies, the pipelines would have to compete with each other.

4.3.2 Costs to Shippers

Dome provided illustrative tolls for both the WSP and the EDS to compare costs to shippers. For each pipeline, these estimated tolls relied on the semi-depreciated methodology articulated in RH-5-1985. That methodology allowed for the recovery of capital and operating costs, and a return on capital applied to a rate base that is averaged between original plant and depreciated plant. The comparison was updated by the correction of the working capital allowance that impacted computations for each of the WSP and the EDS illustrative tolls.

Kinder Morgan contended that the $4.2 million capital estimated by Dome for the facilities to return the WSP to service would be unnecessary. Lower cost estimates consistent with a more focused set of facilities would narrow the difference between illustrative tolls on the two pipelines. Further, NOVA contended that the appropriate focus was not a comparison of tolls between the WSP and the EDS but rather delivered cost. More particularly, NOVA submitted that, for the following two reasons, the proper comparison should be between the WSP without storage, and the EDS. First, NOVA would be able to accept its basic request for 13,000 bpd through a direct connection with the Cochin Pipeline, eliminating the need for storage at Windsor. Second, NOVA could expand its receipt of WSP volumes without reliance on arms length facilities, while its existing facilities could provide sufficient storage to handle initial volumes at no additional cost.

NOVA expressed willingness to commit to a facilities support agreement that would ensure the necessary toll revenue was paid regardless of the volumes shipped. It also indicated a preference to be involved in discussions to identify the facilities required to reactivate service on the WSP, as the tolls are dependent on the costs of the required facilities. NOVA noted that its efforts to advance commercial arrangements are dependent on securing the logistics for delivery of NGL to Corunna.

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9 NEB, Reasons for Decision, Alliance Pipeline Ltd. On behalf of the Alliance Pipeline Limited partnership, GH-3-97, November 1998, page 39.

4.3.3 Other Alternatives

Several alternatives for the transportation of NGL volumes from Windsor to Sarnia were mentioned by Dome, including other pipeline systems such as the Genesis Pipeline or rail and truck transportation. NOVA noted that while the Genesis Pipeline does connect to its Corunna facility, it does not connect to the Windsor Terminal and is therefore unable to receive volumes directly from the Cochin Pipeline. Consequently, Genesis is not an alternative to the EDS and the WSP. NOVA argued that rail and truck transportation cannot be used to move ethane or ethane/propane mix. Moreover, a significant amount of equipment (tank cars or trucks) would be required on a daily basis to move even the minimum intended volume of 13,000 bpd and this could overstretch the available infrastructure. Kinder Morgan also stated that rail and truck transportation would not be a feasible alternative to the WSP because it would still require breakout storage and loading rack activities at the Windsor Terminal.

Chapter 5

Commercial Arrangements

Historical and potential commercial contractual arrangements were discussed in the evidentiary phases.

5.1 Usage Agreement and Joint Venture Agreement

As the owner and operator of the WSP, Dome is responsible for the capital and operating cost to reactivate, operate, maintain and abandon the line. Dome and Kinder Morgan, the Users under the UA, agreed to share these costs, as they also share in toll revenue. The Users agreed to pay the Owner their respective proportions of the annual capital cost of service for the WSP and its operating expenses.

Kinder Morgan noted that the commercial arrangements (including the UA and the JVA introduced earlier) obligate Dome to make the WSP available to the Users, Kinder Morgan and Dome, for the transmission of NGL. In Kinder Morgan's view, the confirmation of the binding commercial arrangements in 2007 at the time of the Joint Application to Transfer Ownership meant that the owner of the WSP would continue to provide Usage rights to Kinder Morgan. Dome contended that the commercial arrangements do not reserve rights to WSP capacity to the Users. Although Kinder Morgan initially spoke of volume rights associated with the UA and JVA, Kinder Morgan clarified that these rights were not determined by the proportions of the agreements, but rather that the existence of the agreements provided that all capacity of the WSP would first serve shippers of the Cochin Pipeline and that if further capacity were available, it could be offered to non-Cochin Pipeline shippers. Further, as discussed in Chapter 3, Kinder Morgan accepted that commercial agreements could not override the application of section 71 of the Act, and that if non-Cochin shippers come to ship on the WSP in the future, the pipeline will have to accept those volumes.

5.2 Tariff Considerations

Although this was not a toll hearing, there was discussion of several matters related to tolls and tariffs. Dome recognized that a tariff would be necessary but noted that it had not yet received enough information to create one. Dome insisted that the tariff must provide it an opportunity to recover its costs and agreed that could be achieved with a facility support agreement. NOVA indicated it was willing to sign firm commitments to pay for service and when asked about its preferences regarding tariff arrangements, indicated it preferred to provide those guarantees through a facilities support agreement and not up front capital contribution.

Parties provided views on the compatibility of common carriage obligations with facility support agreements and priority service. Dome contended that it could only fulfill its common carrier obligations if allowed to provide service to other parties. NOVA supported the WSP being available to shippers from other than the Cochin Pipeline, as well as being available for all NGL.

NOVA submitted that the provision of priority access would not compromise the concept of common carriage provided that a reasonable amount of capacity is available for spot shipments, and cited several Board decisions in support of this position. NOVA indicated that it would accept apportionment if other parties wanted service and committed to a facility support agreement. In the August 2009 open season, Dome invited interest in Windsor to Sarnia transmission, but did not ask parties to specify the pipeline or conditions of interest.

Regarding the approval process, each party drew on aspects of the JVA to describe the duties and powers of the operator and the process for tariff approval. Kinder Morgan stated that it must approve any tariff Dome places on the WSP. Articles 8.1 and 14.1 of the JVA require an affirmative vote of 85 per cent of the voting interests to authorize any toll applications. The result is that the Operator could not make such an application without the approval of Kinder Morgan. Section 8.1(i) of the JVA permits the Operator to file tariffs required by law, if approval is not obtained from partners specified in the commercial arrangements. Dome agreed that the UA provides for the two Users to vote on the tariff.

Kinder Morgan requested that the Board order Dome to prepare and submit a tariff for the transportation of NGL on the WSP to the Users of the UA for approval and then, assuming such approval is granted, submit the tariff to the NEB. Dome was of the view that this would give Kinder Morgan the right to veto any tariff contemplating common carrier service for non-Cochin Pipeline shippers and that would not be in the public interest. Dome was of the opinion that under the JVA, in the absence of agreement, Dome had the ability to apply to the Board for a tariff. Dome did not object to an order that in the absence of agreement among the parties, it file a tariff for approval by the Board in a reasonable time. NOVA submitted that the Board needs to make it clear that if the parties cannot agree, the law requires Dome to file a tariff with the Board.

5.3 Potential Commercial Impacts

For Kinder Morgan, the direct impact of the WSP deactivation was that it had continued to pay charges for the past capital and operating costs of the line, even when it was not in service. From the 2007 transfer of ownership to August 2009, those charges accumulated to $1.1 million. If the line were put back into service, Kinder Morgan expected to pay half of the incremental capital required and to receive half of toll revenue once it was operational. Given Dome's (revised) estimates of the WSP revenue requirement, Kinder Morgan's lost toll revenue would be in the neighbourhood of $1 million per year.

Further, Kinder Morgan contended that retention of the deactivation order MO-04-2009 would have the effect of restricting volumes on the Cochin Pipeline. Kinder Morgan estimated that future utilization of the Cochin Pipeline would be 10,000 to 50,000 bpd lower without the WSP operating. Kinder Morgan submitted that it would suffer continuing annual financial prejudice and damages from foregone revenues on the Cochin Pipeline of $14.6 to $73 million.

As discussed in Chapter 4, Dome provided illustrative tolls to compare costs for shipping on the WSP and on the EDS. Dome indicated that if the WSP were put back into service, there would be some risk of volumes shifting to the WSP from the EDS by current or future shippers. As a result, Dome provided estimates for EDS tolls at various EDS volumes. Dome confirmed

NOVA's submission that current shipments on the EDS are predominantly by affiliates of Dome. Further, Dome is owned by BP whose Sarnia fractionator is a major source of NGL supply in the southwestern Ontario market. BP companies use the EDS and would constitute affiliated shippers for Dome. Notwithstanding that, there is no inter-affiliate code of conduct between Dome and its affiliates. Dome indicated that, under the Act and under BP management direction, it cannot take into account the interests of affiliated shippers when dealing with pipeline matters.

5.4 Timing of Tariff Discussions

All parties indicated that tariff issues could be addressed by the parties after the Board provides direction on major issues that have impeded progress to date. If the Board were to order the WSP back into service, Dome suggested that three to six months would be a reasonable time for discussions among the parties, to identify the necessary facilities, identify and conclude the provisions of an appropriate facility support agreement, and to perform sufficient detailed engineering work. Kinder Morgan stated that it would be in the mutual commercial interest of the parties to agree on a tariff and terms and conditions of service as soon as possible.

Chapter 6

Review of Deactivation Order

The power of administrative review in subsection 21(1) of the Act is an exception to subsection 23(1) which provides that every decision or order of the Board is final and conclusive, except as provided in the Act. Consequently the Board has discretion to review, vary or rescind Order MO-04-2009.

The Board's decisions under subsections 21(1) and 71(1) share a factual foundation. Kinder Morgan asks that Order MO-04-2009 be set aside. Dome is of the view that the WSP should remain deactivated unless required for service by agreement among affected parties or by Order of the Board. Both Dome and NOVA agree that Order MO-04-2009 should be rescinded if the Board orders Dome to provide service on the WSP.

Dome provided evidence that the nitrogen purging is required in any event before the pipeline can be repaired and placed in service for any product other than ethylene. None of the parties disagreed that the purging and related work is required.

Chapter 7

Views of the Board

7.1 Common Carrier Obligation

While there was a general agreement that the WSP is a common carrier, there were differences in opinion as to what that meant in the context of the application before the Board. A key question was whether the capacity of the WSP is dedicated to serving the shippers of the Cochin Pipeline, or whether the capacity would be available to all shippers regardless of the source of the product they wish to ship.

Evidence and argument were presented about whether the Cochin Pipeline and the WSP are one system or two. However, the Board's decision does not turn on this point, and it is not necessary for the Board to reach a conclusion. The fact that service was not available or offered at a particular location in the past does not mean that such a service cannot or should not be offered in the future.

Kinder Morgan acknowledged through its witnesses and its counsel respectively, that there is regulatory risk associated with contracts such as the JVA and the UA, and that the Board and the parties are subject to subsection 71(1) of the Act. The Board finds that Kinder Morgan's initial assertion that the capacity of the WSP should serve only the Cochin Pipeline shippers is not consistent with the obligation of a common carrier under subsection 71(1) to accept "all oil" offered to it for transmission.

The Board concludes that Dome's common carrier duty under subsection 71(1) of the Act extends to "all oil" offered to Dome for transmission by means of its pipeline, regardless of source. The duty applies to oil products which CPCN OC-52 authorizes the WSP to transmit, and includes, but is not restricted to, shippers originating on the Cochin Pipeline. This is the case even though the Cochin Pipeline is the only pipeline which can deliver product to the WSP. The Board wishes to be clear that it is not by this decision authorizing any new connections to the WSP; any such facilities must obtain the appropriate regulatory authorizations and be determined to be in the public interest.

7.2 Markets and Transportation

7.2.1 Supply and Market Interest

The Board notes that the WSP would have access to significant NGL supply sources from western Canada and the US mid-continent through the Cochin Pipeline and its interconnections with other pipeline systems in the US and Canada. The Board also notes that no party raised any substantive issues about the availability of NGL supply for the WSP. The Board considers that given the readily available access the Cochin Pipeline offers to major NGL hubs in North America, there would be sufficient NGL supply to allow the WSP to operate. The market

information provided by the parties was varied and inconclusive. However, the Board is of the view that there are adequate indications of the need for service on the WSP. NOVA has demonstrated that there is market interest in the pipeline through its willingness to commit to a facilities support agreement and, should NOVA be the sole shipper, to pay the cost of service on the WSP.

7.2.2 Transportation Alternatives

In its examination of this case, the Board considers that a transportation alternative to the WSP must offer a physically feasible and comparable service that can reasonably satisfy the transportation needs of the parties requesting the service, in a timely manner. Alternatives identified can then be examined on economic and commercial criteria.

The Board sought information to assess the feasibility of alternatives to the service requested on the WSP. The Board accepts that for NOVA, there is a clear difference between the transportation on the WSP and the alternative offered by the EDS, and that service on the two pipelines is not comparable. The Board notes the key difference in the service offered on the EDS is related to the requirement and cost of using terminalling and storage services at Windsor for the transfer of NGL volumes from the Cochin Pipeline to the EDS. The Board further notes that, even if the services provided by the EDS and WSP were comparable, there is uncertainty regarding the in-service date of the storage caverns at Windsor to receive non-propane NGL from the Cochin Pipeline. The Board also accepts that the direct transfer operation between the Cochin Pipeline and WSP system is physically feasible, subject to some modification to existing facilities. The Board concludes that, given the uncertainty as to when or whether service can be provided upstream of the EDS, the service offered by the EDS is not a feasible alternative to the WSP for the service sought by NOVA.

The Board notes that NOVA has storage at its Corunna site and the flexibility to accept some interface. NOVA wants to take advantage of these circumstances to reduce the delivered cost to its facility at Corunna. Use of the EDS would require storage and terminalling at the WSFJV caverns which at present can accept only propane and not the NGL mix that NOVA wishes to ship. If the WSFJV caverns could offer terminalling and storage services for non-propane NGL, there would be associated costs that could be avoided by using the WSP. The Board also notes that NOVA's situation may be unique, as NOVA has proprietary storage at Corunna, NGL feedstock flexibility and direct connections with the WSP and the EDS. Other shippers wishing transportation services may have different storage needs and might require storage either at the Windsor Terminal or in another location upstream or downstream of the WSP.

All parties commented that this is not a tolling hearing. The Board heard evidence from the parties on illustrative comparative tolls for the WSP and EDS. The Board notes that the largest difference of opinion in comparing the economics of alternative arrangements was between Dome and NOVA. Dome's view was that the appropriate comparison should include storage on each system. NOVA's view was that WSFJV storage was unnecessary and that its costs should not be included in a comparison since it has its own storage facility. However, after consideration of the evidence and determination that service on the EDS is not a feasible alternative to the WSP as described above, the Board finds that differences in tolls on the two pipelines had no bearing on its decision.

Dome indicated it preferred to optimize the operation of the EDS and WSP. The Board is not rendering a decision at this time on this point. The Board would look at that question if an application were made to rationalize the two pipelines. The Board would necessarily consider the needs of shippers in making its decision.

7.3 Providing Service on the WSP

7.3.1 Status of Order MO-04-2009

The Board is satisfied that NOVA has made a serious request for service on the WSP. Under subsection 21(1), the Board has decided to rescind Order MO-04-2009 and will issue an order to that effect.

However, the Board is of the view that the nitrogen purging and related work authorized by the deactivation order is necessary in order to provide service on the WSP. As a condition of providing service under subsection 71(1) of the Act, the Board will require Dome to complete that work.

The Board observes that Dome would be required to file a deactivation application if no service were forthcoming on the WSP, based on NOVA not proceeding with its service request. In any event, for Dome to provide service on the WSP, it must first file a reactivation application under section 45 of the OPR-99 because the WSP has been in a deactivated state longer than 12 months.

7.3.2 Transmission of NGL on the WSP

Judicial authority concerning the test of reasonableness indicates that it would be unreasonable to require Dome to offer service on the WSP if it does not have a reasonable opportunity to recover its costs from shippers. The Board's decision under subsection 71(1) is contingent on this factor. NOVA is the only shipper currently expressing serious commitment to ship on the WSP. To date, subject to the uncertainties involved in clarifying the costs to meet the planned service levels and in finalizing tariff and toll matters, NOVA has indicated its willingness to commit to a facilities support agreement and, if no other shippers materialize, to cover the entire cost of service.

Therefore the Board directs that Dome receive, transport and deliver NGL offered by NOVA to Dome for transmission on the WSP, consistent with Dome's common carrier obligation. Consistent with its views in the previous section, the Board's decision is subject to the condition that Dome complete the nitrogen purging and related work described in its deactivation application dated 23 December 2008, and that Dome comply with the environmental protection and compliance reporting conditions contained in MO-06-2010.

Kinder Morgan is not a shipper offering NGL for transmission. The Board is making its direction to Dome under subsection 71(1) of the Act on the basis of the NOVA request for WSP service and not with respect to Kinder Morgan at this time.

The Board also notes Dome's evidence that the WSP is capable of providing service, and should be able to do so for a long time. Still, the WSP must meet regulatory requirements to reactivate and operate safely including obtaining an order under section 45 of the OPR-99.

7.3.3 Provision of Adequate and Suitable Facilities

Subsection 71(3) of the Act provides that the Board may, in the public interest, order Dome to provide adequate and suitable facilities to provide service on the WSP. The Board may make such an order if no undue burden would be placed on Dome.

The evidence is clear that modifications and repairs to existing facilities are required in order to provide service on the WSP. Also, new facilities may be required. The Board notes, however, that parties want an opportunity among themselves to finalize NOVA's request for service and negotiate economical solutions for specific facilities.

The Board has identified three categories of facilities that may be required to effect service: the spool piece and pump; a meter station at the inlet to the WSP; and other facilities.

The Board notes that Dome removed the spool piece and disconnected the pump. Both the spool piece and the pump are required in order for service to be provided on the WSP. The spool piece should be reinstalled if the WSP is to provide service, but it would not be good practice to reinstall it if the WSP remains dormant. The pump (referred to as P-340) located on the Cochin Pipeline is the only pump connected to the WSP and is used to inject volumes into the WSP. Kinder Morgan has acknowledged that should it become necessary, the pump could be modified to meet the requirements of service requested by NOVA and that it is responsible for the costs of modifying the pump.

There are meters at the outlet of the Cochin Pipeline. However, Dome asserted that it requires a new meter station located downstream of manifolding and closer to the inlet to the WSP to reduce the potential of unaccounted-for losses of volumes. The Board recognizes that it is prudent and necessary for any pipeline company to ensure that volumes received into and delivered out of its pipelines are accurately measured. However, in these circumstances that include a single shipper service request and a single pipeline connected to the WSP inlet, there may be a number of effective, lower cost alternatives and commercial options to mitigate system losses and liabilities. The Board notes the willingness of parties to negotiate on this issue.

The need for and cost of several other facilities were explored during the hearing process. The positions of Kinder Morgan, NOVA and Dome concerning the need for specific new facilities appeared to be polarized during the initial phases of the hearing. By the end of the oral portion of the hearing, the parties agreed that further examination, analysis and discussion among themselves would be prudent prior to finalizing what facilities additions and modifications would be necessary. The Board accepts this approach. The Board encourages parties to seek out cost-effective solutions including the sharing of existing facilities, where appropriate and acceptable to parties.

In conclusion, with respect to the spool piece and the pump, the Board directs Dome to effect the reconnection of the Cochin Pipeline to the WSP at the time of the reactivation of the WSP. In

the Board's view, there is no undue burden to Dome to effect the re-connection. The Board recognizes that further facilities may be required but accepts the desire of parties to determine what facilities are needed to accommodate the service request. In the Board's view there would be no undue burden on Dome to provide adequate and suitable facilities provided that NOVA is prepared to commit to a facilities support agreement.

The Board notes that approvals may be required pursuant to section 58 of the NEB Act for the installation of facilities. Additionally, Dome requires Board approval of an application to reactivate the pipeline under section 45 of the OPR-99.

7.4 Commercial Arrangements and Timing

The Board finds that information concerning the UA and JVA to be relevant to its understanding of the context for this application. However, commercial arrangements among parties do not constrain the Board's consideration and decision.

To effect service on the WSP, a tariff is required. Although the Board accepts that this is not a tariff proceeding, certain principles related to the tariff were discussed. The Board finds the following principles necessary components to the tariff: that it provides Dome a reasonable opportunity to recover its costs associated with providing service on the WSP and that it recognizes the common carrier obligation of the WSP.

The Board observes that none of the parties requested that Dome be exempted from fulfilling its common carrier duties under the Act. Typically, where a common carrier provides contracted service with some form of priority shipping, the Board has considered whether the contract carrier status is maintained. In OH-2-97, the Board said that "many different arrangements could be made to ensure that an oil pipeline is complying with section 71 of the Act."[10] Where contracted service is accompanied by some form of priority shipping, usually the common carrier is sponsoring new construction or modifications to its facilities. In contrast, in this case, Dome had proposed to deactivate the pipeline.

Regarding the initial period of service, the Board observes that in August and September 2009, Dome solicited non-binding expressions of interest for NGL transportation between Windsor and Sarnia. Further, there was broad public notice published in nine local and national newspapers announcing the public hearing. However, only one potential shipper came forth during this hearing. On the facts of this case, the Board is satisfied that the WSP will maintain its common carrier status initially without an open season being conducted at this time.

With the specific facilities of this case, including only one delivery point for NOVA's initial request for service, there are no other delivery points to attract service for any shipper. Consequently, neither apportionment nor batch handling may be relevant issues when the WSP is reactivated for up to 13,000 bpd service. However, future open seasons may be appropriate to address new service requests as new shippers emerge or additional delivery points are requested. For the WSP to maintain common carrier status, the tariff must delineate the terms and conditions to allow the WSP to offer service for other shippers at other possible delivery points.

10 OH-2-97 Reasons for Decision, Interprovincial Pipe Line Inc., Facilities and Toll Methodology, December 1997

The Board is satisfied that the parties expressed willingness and flexibility to negotiate fair and reasonable terms and conditions. Further, the Board is satisfied with NOVA's serious commitment to ship on the WSP, as evidenced by its willingness to sign a facility support agreement and to pay the entire cost of service, if necessary. The Board expects parties to move forward to complete negotiations without delay. Further, the Board directs Dome to file a tariff with the Board, with comments from potential shippers on the WSP, whether or not there is agreement between the Users under the UA. The Board directs that this tariff be filed with the Board within three months of the date of issuance of the order accompanying this decision, and that Dome demonstrate how the tariff will meet the principles established above.

7.5 Concluding Remarks

For the foregoing reasons, the Board has directed Dome to provide service under subsection 71(1), to effect the reconnection of facilities under subsection 71(3) and to file a tariff under Part IV and section 59 of the Act. In light of these decisions, the Board has rescinded Order MO-04-2009.

Chapter 8

Disposition

The foregoing constitutes our Reasons for Decision in respect of the application considered by the Board in the MH-1-2009 proceeding.

G Habib

G.A. Habib
Presiding Member

R.R.George
Member

L. Mercier
Member

Calgary, Alberta
April 2010

Appendix I

Board Letter and Order MO-04-2009

File OF-Fac-Oil-D128-2008-03 01
10 February 2009

Ms. Suzanne Boucher-Chen
Director, Regulatory Affairs NGL
BP Canada Energy Company
240 - 4th Avenue S.W.
P.O. Box 200
Calgary, AB T2P 2H8
Facsimile: 403-233-1285

Dear Ms. Boucher-Chen:

Dome NGL Pipeline Ltd. (Dome NGL) - 2008 Application Pursuant to Section 44(1) of the *Onshore Pipeline Regulations, 1999* for Leave to Deactivate the Windsor-Dow Pipeline

The National Energy Board has received an application dated 23 December 2008 from Dome NGL to deactivate the Windsor to Dow Pipeline (Project). This pipeline extends approximately 133 kilometres between the Windsor Terminal, in Windsor, Ontario to the now non-operational Dow Chemical underground storage facility (the "Dow Site") in Sarnia, Ontario.[1] Subsequent to the filing of the application, the Board received a letter dated 6 January 2009 from Mr. James H. Smellie, counsel on behalf of NOVA Chemicals Corporation (NOVA Chemicals).

The Board notes Dome NGL's plan for continued discussions with other parties that may result in the affected pipeline being placed back into service. NOVA Chemicals has advised that it has entered into discussions with Dome NGL with respect to service on the Project, and requested that the Board and Dome NGL keep NOVA Chemicals notified with respect to the deactivation application, including any process which the Board may establish to deal with the application.

Since the pipeline has been dormant for 12 months, the Board has decided that it is appropriate that the pipeline be deactivated. Therefore, the Board has issued Order MO-04-2009 approving the Project. A copy of the Order and its Schedule A, which outlines the specifics of the Project, are attached.

Dome NGL Pipeline Ltd. is reminded that it must comply with section 45 of the *Onshore Pipeline Regulations, 1999* with respect to reactivation of the pipeline.

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1 In Certificate of Public and Convenience OC-52, the pipeline is called the Windsor-Sarnia pipeline, but is referred in the application and in this letter as the Windsor -Dow pipeline to avoid confusion with other pipelines.

Dome NGL is directed to serve a copy of this letter and the attached Order on its Interested Parties List and, if they are not on the list, Mr. David R. Tulk at NOVA Chemicals, and Mr. James H. Smellie at Gowling LaFleur Henderson LLP.

Yours truly,

Claudine Dutil-Berry
Secretary of the Board

Attachments (Order, Schedule A)

ORDER MO-04-2009

IN THE MATTER OF the *National Energy Board Act* (the Act) and the regulations made thereunder; and

IN THE MATTER OF an application made by Dome NGL Pipeline Ltd., pursuant to section 44(1) of the *Onshore Pipeline Regulations, 1999* (OPR-99) dated 23 December 2008, filed with the National Energy Board under File OF-Fac-Oil-D128-2008-03 01

BEFORE the Board on 10 February 2009.

WHEREAS Dome NGL Pipeline Ltd. is the holder of Certificate of Public Convenience and Necessity OC-52 with respect to the Windsor-Dow Pipeline, described in the Certificate as the Windsor-Sarnia Pipeline;

AND WHEREAS Dome NGL Pipeline Ltd. filed an application dated 23 December 2008, pursuant to subsection 44(1) of the OPR-99, for leave to deactivate approximately 133 kilometers of pipeline encompassed in OC-52, that runs between the Windsor Terminal, in Windsor, Ontario to the now non-operational Dow Chemical underground storage facility (the "Dow Site") in Sarnia, Ontario, at an estimated cost of $150,000 (the Project);

AND WHEREAS information about the Project is set out in Schedule A;

AND WHEREAS the Board has considered environmental matters related to the Project pursuant to the Part III of the Act;

AND WHEREAS the Board has examined the application and considers it to be in the public interest to grant the relief requested;

IT IS ORDERED pursuant to section 44(1) of the OPR-99, that the applied-for Project is approved subject to the following conditions:

1. Dome NGL Pipeline Ltd. shall cause the approved Project to be deactivated and maintained in accordance with the specifications, standards and other information referred to in its application.

2. Dome NGL Pipeline Ltd. shall implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations and procedures for the protection of the environment included in or referred to in the application or in related submissions.

3. Within 30 days of the date that the approved Project is completed, Dome NGL Pipeline Ltd. shall file with the Board a confirmation, by an officer of the Company, that the approved Project was completed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, the officer of the Company shall file with the Board details as to why compliance cannot be confirmed.

The filing required by this condition shall include a statement confirming that the signatory to the filing is an officer of the Company.

4. Unless the Board otherwise directs prior to 10 February 2010, this Order shall expire on 10 February 2010, unless the Project has commenced by that date.

NATIONAL ENERGY BOARD

Claudine Dutil-Berry
Secretary of the Board

SCHEDULE A

National Energy Board Order MO-04-2009

Dome NGL Pipeline Ltd.
Application dated 23 December 2008
Assessed pursuant to section 44(1) of the *Onshore Pipeline Regulations, 1999*
Leave to Deactivate the Windsor-Dow Pipeline
File OF-Fac-Oil-D128-2008-03 01

Pipeline Specifications

Construction Type	Deactivation
Length	133 km
Location (endpoints)	Located between the pig trap at the BP Resources operated Windsor Terminal Site in Windsor, Ontario and the pig trap located at the now non-operational Dow Chemical underground storage facility in Sarnia, Ontario
Outside Diameter	323.9 mm (NPS 12)
Wall Thickness	5.8, 6.2, 7.5, 9.0 and 12.7 mm
Grade	386 MPa

Appendix II

Board Letter Denying Kinder Morgan's Stay Application

File OF-Fac-Oil-D128-2008-03 01
30 June 2009

Mr. Peter J. Forrester
Assistant General Counsel
Kinder Morgan Group of Companies
Kinder Morgan Canada Inc.
Suite 2700 – 300 5th Ave SW
Calgary, AB T2P 5J2
Facsimile 403-514-6622

Mr. Parvez Khan
Jeffrey, Twyman LLP
Regulatory Law Chambers
2050, 645-7th Ave SW
Calgary, AB T2P 4G8
Facsimile 403-532-7993

Dear Sirs:

Application for Stay of Board Order MO-04-2009
Respecting the Deactivation of the Windsor-Sarnia Pipeline

The National Energy Board received an application dated 12 March 2009 from the Kinder Morgan Canada Company (Kinder Morgan) requesting a stay of Board Order MO-04-2009 which authorized the deactivation of the Windsor-Sarnia Pipeline[1]. The Board subsequently invited submissions from parties on whether a stay should be granted, and received submissions in favour of a stay being granted from NOVA Chemicals Corporation and a submission from Dome NGL Pipeline Ltd. opposing the stay. The Board also received reply comments from Kinder Morgan. Imperial Oil Limited sent submissions in favour of the stay, but after the process had closed.

Upon consideration of the evidence before it, the Board has determined that Kinder Morgan has not satisfied the three-part test for a stay of Order MO-04-2009 as articulated by the Supreme Court of Canada.[2] The Board finds that Kinder Morgan has not shown that it would suffer irreparable harm if the stay is not granted. The Board hereby denies Kinder Morgan's request and terminates the interim stay granted in its letter of 20 March 2009.

Should you have questions about this letter, please contact Michelle Haug, Board Counsel, at 403-299-2707.

Yours truly,

Claudine Dutil-Berry
Secretary of the Board

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1 In the original deactivation application and in Order MO-04-2009, the pipeline was referred to as the Windsor-Dow Pipeline, however in Certificate of Public and Convenience OC-52, it is called the Windsor-Sarnia Pipeline.

2 RJR -- MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311

Appendix III

Board Letter Granting Kinder Morgan's Review Application

File OF-Fac-Oil-D128-2008-03 01
30 June 2009

Mr. Peter J. Forrester
Assistant General Counsel
Kinder Morgan Group of Companies
Kinder Morgan Canada Inc.
Suite 2700 – 300 5th Ave SW
Calgary, AB T2P 5J2
Facsimile 403-514-6622

Mr. Parvez Khan
Jeffrey, Twyman LLP
Regulatory Law Chambers
2050, 645-7th Ave SW
Calgary, AB T2P 4G8
Facsimile 403-532-7993

Dear Sirs:

Application for Review of Board Order MO-04-2009
Respecting the Deactivation of the Windsor-Sarnia Pipeline[1]

The National Energy Board has received an application dated 31 March 2009 from the Kinder Morgan Canada Company (Kinder Morgan) for a variety of relief, including a request for a rehearing of the above-referenced deactivation application, an application for a review and variance of Order MO-04-2009 under subsection 21(1) of the *National Energy Board Act* (Act) and a request for service under subsection 71(1).

Request for Rehearing

According to subsection 21(1) of the Act, the Board may rehear an application before deciding it. Since the Board has already made a decision with respect to Dome's deactivation application, the relief of rehearing is no longer available to Kinder Morgan.

Request for Review

Pursuant to subsection 21(1) of the Act and section 44 of the *National Energy Board Rules of Practice and Procedure, 1995*, the Board may review its decisions if it is of the opinion that a doubt has been raised as to the correctness of the decision.

Kinder Morgan's application for stay of Order MO-04-2009 and the submissions of Dome NGL Pipeline Ltd. and NOVA Chemicals Corporation addressed service of notice of the deactivation application and the information about communications with commercial third parties that had been included in Dome's deactivation application. In the Board's view, the review application

1 In the original deactivation application and in Order MO-04-2009, the pipeline was referred to as the Windsor-Dow Pipeline, however in Certificate of Public and Convenience OC-52, it is called the Windsor-Sarnia pipeline.

rather than the stay application is the appropriate forum to consider the issue of service of the notice. It is also appropriate to consider as part of the review application the submissions concerning commercial third parties, described above.

Kinder Morgan submitted that it received no notice of the deactivation application, but acknowledges that an affiliate, Kinder Morgan Cochin ULC, was notified. Kinder Morgan does not deny Dome's assertion that it sent notice of the deactivation application to the contact designated by Kinder Morgan Energy Partners, L.P. (KMEP) and that KMEP was representing Kinder Morgan. The notice of the deactivation application did not come to the attention of Kinder Morgan in a timely way. After careful consideration of the submissions, the Board is of the view that Kinder Morgan received notice by service upon the contact designated by KMEP.

NOVA Chemicals states that it was not notified of the deactivation application. Nevertheless, it became aware of the application and made submissions to the Board. The Board did not receive submissions from Dome in regard to this when making its finding, but is of the view that Dome is not prejudiced. The Board finds that NOVA Chemicals was heard and cannot now claim relief for lack of notice.

The Board also considered the information about communications with commercial third parties included in Dome's deactivation application. In the Board's view, the deactivation application did not adequately disclose the unresolved concerns of potential shippers with respect to service on the pipeline. This raises a doubt as to the correctness of the decision to issue Board Order MO-04-2009. Since Kinder Morgan has established a *prima facie* case, the Board will proceed to consideration of the review on its merits.

Next Steps in Considering the Review and Request for Service

The Board intends to combine consideration of the review, the subsection 71(1) application, and remaining relief requested, and will issue its directions on procedures shortly.

Should you have questions about this letter, please contact Michelle Haug, Board Counsel, at 403-299-2707.

Yours truly,

Claudine Dutil-Berry
Secretary of the Board

Appendix IV

List of Issues

1. Whether the deactivation of the pipeline is in the public interest.

2. Whether service should be provided on the pipeline, including, but not limited to, a description of:

   a. the source of supply and markets to be served;

   b. other economically viable options for the provision of service;

   c. the potential commercial impact of service requested; and

   d. any other relevant public interest matter.

3. The hydrocarbons or other commodities that would be transported on the pipeline.

4. The facilities and activities that would be required to provide the receipt, transmission and delivery of these hydrocarbons or other commodities on the pipeline, and their cost.

5. Whether there would be an undue burden on Dome should it be required to provide adequate and suitable facilities for the receiving, transmission and delivery of product on the pipeline.

6. The appropriate financing, tolling methodology and tariff provisions, and other terms of service, should the Board grant the request to compel service.

7. The appropriate terms and conditions to be included in any approval which may be granted.

Appendix V

Legislation

National Energy Board Act

21. (1) Subject to subsection (2), the Board may review, vary or rescind any decision or order made by it or rehear any application before deciding it.

59. The Board may make orders with respect to all matters relating to traffic, tolls or tariffs.

67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.

71. (1) Subject to such exemptions, conditions or regulations as the Board may prescribe, a company operating a pipeline for the transmission of oil shall, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline.

71. (3) The Board may, if it considers it necessary or desirable to do so in the public interest, require a company operating a pipeline for the transmission of hydrocarbons, or for the transmission of any other commodity authorized by a certificate issued under section 52, to provide adequate and suitable facilities for

(a) the receiving, transmission and delivering of the hydrocarbons or other commodity offered for transmission by means of its pipeline,

(b) the storage of the hydrocarbons or other commodity, and

(c) the junction of its pipeline with other facilities for the transmission of the hydrocarbons or other commodity,

if the Board finds that no undue burden will be placed on the company by requiring the company to do so.

74. (1) A company shall not, without the leave of the Board,

(a) sell, transfer or lease to any person its pipeline, in whole or in part;

(b) purchase or lease any pipeline from any person;

(c) enter into an agreement for amalgamation with any other company; or

(d) abandon the operation of a pipeline.

44. (1) If a company proposes to deactivate a pipeline or part of one for 12 months or more, has maintained a pipeline or part of one in a deactivated mode for 12 months or more or has not operated a pipeline or part of one for 12 months or more, the company shall submit an application for deactivation to the Board.

(2) The company shall include in the application the reasons, and the procedures that were or are to be used, for the activity that is the subject of the application.

45. (1) If a company proposes to reactivate a pipeline or part of one that has been deactivated for 12 months or more, the company shall submit an application for the reactivation to the Board.

(2) The company shall include in the application the reasons, and the procedures that are to be used, for the reactivation.

Appendix VI

Views of Parties on Required Facilities

A new meter facility at or near the Corunna facility delivery point

Dome indicated that the meter station owned by NOVA at the Corunna facility is a pipe to pipe connection and that there is no concern with unaccounted systems losses in this instance. Dome further indicated that a new meter station may not be necessary if the existing meters prove to be acceptable for the needed service and if a commercial arrangement can be reached with NOVA for use of the meters. Dome was optimistic that such an arrangement could be achieved.

Kinder Morgan was of the opinion that a new meter station would not be necessary as the existing station had been used successfully in the past for receipts from WSP.

A new mainline block valve immediately Downstream of the Corunna facility

Dome indicated in its evidence that a new mainline block valve may be needed just downstream of the Corunna facility takeoff if the WSP was to be put into a tightline service from the Cochin Pipeline to Corunna. The need for the valve was related to safety of operation and line control. During the oral portion of the hearing, Dome indicated that the nearest valve is approximately three to four kilometers downstream. Further assessment and field investigation will be required to determine the need for an additional line block valve at this location.

Kinder Morgan indicated that the assessment as to the need for a mainline block valve at this location would depend upon the proximity of the next block valve downstream of the NOVA take off point.

A batch detector immediately upstream of the Corunna facility

Dome NGL indicated that depending on the service being provided, a batch detector may or may not be required upstream of the NOVA Corunna receipt point. A detector would be required if the pipeline were operating in batch mode. Kinder Morgan stated that the batch detector is not needed for the requested service as it involves a single product.

Replacement of existing meters at the termination of the WSP at the Dow storage facility

Dome indicated that the WSP has a metering facility at its terminus at the Dow storage facility. It would require more information on the service to be provided and further evaluation of the meters' capabilities and condition prior to any decision to replace or repair the meters.

Kinder Morgan had no comment as they have no information on the Dow site.

Facilities associated with provision of a new WSP receipt point at the Windsor Terminal

The WSP inlet is only connected to Cochin Pipeline facilities. In the event that other shippers at the Windsor Terminal would like to ship on the WSP, significant new facility additions would be required. At this time, no estimates of cost or timeframe had been developed.

Kinder Morgan stated that costs at the WSFJV caverns are not relevant as they are not WSP costs.

Appendix VII

Board Order RO-MO-04-2009

ORDER RO-MO-04-2009

IN THE MATTER OF the *National Energy Board Act* (the Act) and the regulations made thereunder; and

IN THE MATTER OF Order MO-04-2009, dated 10 February 2009, authorizing the deactivation of the Windsor-Sarnia Pipeline (WSP), pursuant to section 44(1) of the *Onshore Pipeline Regulations, 1999* (OPR-99) operated by Dome NGL Pipeline Ltd. (Dome), filed with the National Energy Board under File OF-Fac-Oil-D128-2008-03 01.

IN THE MATTER OF a review application dated 31 March 2009 pursuant to subsection 21(1) of the Act filed by Kinder Morgan Canada Company (Kinder Morgan) with the Board under File OF-Fac-Oil-D128-2008-03 03.

BEFORE the Board on 23 March 2010.

WHEREAS Dome is the holder of Certificate of Public Convenience and Necessity (CPCN) OC-52 issued 6 December 2007 with respect to the WSP;

AND WHEREAS Dome filed an application dated 23 December 2008, pursuant to subsection 44(1) of the OPR-99, for leave to deactivate approximately 133 kilometers of pipeline encompassed in CPCN OC-52, that runs between the Windsor Terminal in Windsor, Ontario to the now non-operational Dow Chemical underground storage facility in Sarnia, Ontario;

AND WHEREAS Order MO-04-2009 was issued 10 February 2009 with respect to the deactivation of the WSP;

AND WHEREAS Kinder Morgan filed an application dated 31 March 2009 for a review of Order MO-04-2009;

AND WHEREAS the Board decided to allow the review as a doubt as to the correctness of the original decision had been raised;

AND WHEREAS the Board issued Hearing Order MH-1-2009 on 17 July 2009 and considered evidence from parties in this matter;

AND WHEREAS the Board has examined the application and considers it to be in the public interest to rescind Order MO-04-2009;

IT IS ORDERED THAT, pursuant to subsection 21(1) of the Act, Order MO-04-2009 is rescinded.

ISSUED at the City of Calgary, in the Province of Alberta, this 15th day of April, 2010.

NATIONAL ENERGY BOARD

Anne-Marie Erickson
Secretary of the Board

Appendix VIII

Board Order MO-06-2010

ORDER MO-06-2010

IN THE MATTER OF the *National Energy Board Act* (the Act) and the regulations made thereunder; and

IN THE MATTER OF an application by Kinder Morgan Canada Company (Kinder Morgan) pursuant to subsections 71(1), 71(3) and section 59 of the Act filed with the National Energy Board under File OF-Fac-Oil-D128-2008-03 01.

BEFORE the Board on 23 March 2010.

WHEREAS Dome NGL Pipeline Ltd. (Dome) is the holder of Certificate of Public Convenience and Necessity (CPCN) OC-52 issued 6 December 2007 with respect to the Windsor-Sarnia Pipeline (WSP);

AND WHEREAS Dome filed an application dated 23 December 2008, pursuant to subsection 44(1) of the Onshore *Pipeline Regulations 1999* (OPR-99), for leave to deactivate approximately 133 kilometers of pipeline encompassed in CPCN OC-52, that runs between the Windsor Terminal, in Windsor, Ontario to the now non-operational Dow Chemical underground storage facility in Sarnia, Ontario;

AND WHEREAS Order MO-04-2009 was issued 10 February 2009 with respect to the deactivation of the WSP;

AND WHEREAS Kinder Morgan filed an application dated 31 March 2009 requesting relief, as described in its application and evidence, including:

- an order compelling Dome to receive, transport and deliver natural gas liquids on the WSP, up to its capacity, pursuant to subsection 71(1) of the Act;
- an order requiring Dome to provide adequate and suitable facilities for receiving NGL onto the WSP, pursuant to subsection 71(3) of the Act; and
- an order directing Dome to file a tariff pursuant to section 59 of the Act.

AND WHEREAS Kinder Morgan modified aspects of the relief it requested, as described in its evidence;

AND WHEREAS Kinder Morgan has not offered oil for transportation, however NOVA Chemicals Corporation (NOVA) has requested that Dome receive, transport and deliver NGL on the WSP, pursuant to subsection 71(1) of the Act;

AND WHEREAS NOVA requested that Dome receive, transport and deliver NGL on the WSP, pursuant to subsection 71(1) of the Act;

AND WHEREAS the Board issued Hearing Order MH-1-2009 on 17 July 2009 and considered evidence from parties in this matter;

AND WHEREAS the WSP is a common carrier and the Board has determined that Dome's common carrier duty extends to all oil which CPCN OC-52 authorizes the WSP to transmit, without limitation as to the source of the oil;

AND WHEREAS Order RO-MO-04-2009 rescinds Order MO-04-2009;

IT IS ORDERED THAT:

1. Dome shall receive, transport and deliver NGL offered by NOVA to Dome for transmission on the WSP, consistent with Dome's common carrier obligation, pursuant to subsection 71(1) of the Act, on the following conditions:

    a. Dome shall complete the nitrogen purging and related work in accordance with the specifications, standards and other information referred to in its deactivation application dated 23 December 2008.

    b. Dome shall implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations and procedures for the protection of the environment included in or referred to in the deactivation application or submissions relating to the deactivation application.

    c. Within 30 days of the date that the nitrogen purging and related work is complete, Dome shall file with the Board a confirmation, by an officer of the Company, that the nitrogen purging and related work was completed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, the officer of the Company shall file with the Board details as to why compliance cannot be confirmed. The filing required by this condition shall include a statement confirming that the signatory to the filing is an officer of the Company.

2. Dome shall, with respect to the spool piece and pump, when reactivating the WSP, effect the reconnection of the Cochin Pipeline to the WSP pursuant to subsection 71(3) of the Act.

3. Dome shall file a tariff with the Board within three months of the date of issuance of this order, pursuant to Part IV and section 59 of the Act.

ISSUED at the City of Calgary, in the Province of Alberta, this 15^{th} day of April, 2010.

NATIONAL ENERGY BOARD

Anne-Marie Erickson
Secretary of the Board